

**Fair Political Practices Commission**  
**Memorandum**

**To:** Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh, & Remy

**From:** John W. Wallace, Assistant General Counsel  
Scott Hallabrin, General Counsel

**Subject:** June 2007 Work Plan Revisions

**Date:** May 22, 2007

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**I. INTRODUCTION**

Each year the Commission approves a regulatory work plan for the next calendar year.<sup>1</sup> The plan provides for quarterly work plan revisions. Attached is the regulation calendar reflecting the June updates to the 2007 regulatory work plan. This memorandum discusses the changes made to the calendar for the rest of the year. The numbering of the items is intended to match the numerical designation on the attached regulatory calendar.

**II. NEW ITEMS**

**Item B17. Early Primary: Regulation 18420.5.** The reg sets the filing schedule for state ballot measures and candidates appearing on the February 5, 2008 statewide primary election ballot. The regulation was considered for prenotice in March and is up for adoption in August.

**Item D1. Expansion of Executive Director's (ED) Discretion to Delegate Authority to Conduct Probable Cause Hearings.** Staff proposes amendment of Reg. 18361.7 and adoption of Reg. 18361, enabling the ED to delegate to Commission staff other than the General Counsel his authority over probable cause proceedings and related enforcement duties. This expanded discretion would ensure that such duties are carried out with fairness and impartiality to all parties.

**Item D2. Closed sessions and Civil Litigation:** A closed session under the litigation exception to Bagley-Keene requires: (1) receipt of advice from legal counsel and (2) a memo stating the specific reasons for the closed session. The FPPC's regulation re: Civil Litigation (18361.2) differs from Bagley Keene in some respects and staff recommends conforming changes.

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<sup>1</sup> See staff memorandum dated November 27, 2006, *Approval of 2007 Regulatory Priorities*.

**Item D5. Amendments to the Commission's Conflict of Interest Code.****III. ITEMS DEFERRED TO NEXT YEAR**

Due to the introduction of the new items discussed above, the following items have been removed from the calendar and some deferred until next year.

**Item A1: Section 82015: Cosponsored Payments [DEFERRED]:** Section 82015(a) of the Act defines a "contribution" as "a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes." Section 82015(b)(2) provides that a payment made at the behest of a candidate by a third party is a contribution to the candidate *unless* (among other exceptions) the payment is made principally for legislative, governmental, or charitable purposes. These payments are considered payments made for cosponsored events. However, these "cosponsored" payments must be reported within 30 days following the date on which the payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year in which they are made. Staff proposes to draft a form for reporting co-sponsored payments under section 82015(b)(2)(B)(iii). A regulation may be needed to specify the reporting requirements. Currently, the statute requires disclosure of every payment made by the co-sponsor once the \$5,000 threshold is met.

**Item B8. Reports and Statements; Filing Dates (Regulation 18116)**  
**[DEFERRED]:** Pursuant to regulation 18116, when a deadline for a statement or report falls on a Saturday, Sunday or official state holiday, the filing deadline shall be extended to the next regular business day. This extension does not apply to late contribution reports required by section 84203, late independent expenditure reports required by section 84204, or notice by the contributor of a late in-kind contribution required by section 84203.3. **Proposal:** The Secretary of State's campaign reporting task force recommends that except for the weekend prior to an election, the "next business day" exception should apply to reports required to be filed within 24 hours, including late contribution/late independent expenditure reports, and election cycle reports required under sections 85309 and 85500.

**Item B10: Item 10. Late Contribution Reports (Regulation 18425)**  
**[DEFERRED].** In response to a request for verbal advice, staff advised that a nonmonetary contribution (compensated services) was received, for purposes of the 24-hour reporting, on the date the individual's paycheck is normally issued, not every time the individual provides \$1,000 worth of services (potentially requiring a report every day during the 90-day cycle). **Proposal:** Amend the regulation to allow estimated reports during the 90-day election cycle and to allow estimated reports of independent expenditures reported during the same period.

**Item C2: Parcel Disclosure [DELETED]:** Regulation 18730 governs the provisions of the conflict of interest codes, including the manner of reporting economic interests on a Statement of Economic Interests (Form 700). Specifically, regulation 18730(b)(7)(A)(3) governs the manner of reporting real property interests and allows the address *or other precise location of the real property* to be disclosed on the Form 700. This provision has been construed to allow reporting an assessor's parcel number instead of a street address.

Generally, the real property disclosure requirement is meant to provide the public with the exact location of the filer's real property interests as a means to determine whether the filer may have a conflict of interest in making a particular governmental decision related to the property. While disclosure of an assessor's parcel number technically reveals the precise location of a property, a parcel number listed on Form 700 could instead be used as a means of concealing the property's location from members of the public who do not have the knowledge or means to take the steps necessary to determine the location of the property. This could easily thwart the intended purpose of the disclosure requirement.

The enforcement division staff therefore proposes an amendment to regulation 18730(b)(7)(A)(3) to clarify that the property address of a filer's real property interest must be disclosed, if one exists. If there is no street address, another method which accurately reflects the precise location of the real property will suffice. Thus, an alternate method indicating the precise location of the property could be used only when a street address is not available. This change will allow for full disclosure of real property interests and will provide meaningful disclosure of those interests to the members of the public. This change will also allow decisions made, participated in, or influenced by a public official, which are related to his or her property interests, to be more easily identified.

**Item C3. Gifts to an Agency (Regulation 18944.2) [DEFERRED]:** A payment is deemed to be a gift to a public agency, not a gift to a public official, if all of the following requirements are met:

- (1) The agency receives and controls the payment.
- (2) The payment is used for official agency business.
- (3) The agency, in its sole discretion, determines the specific official or officials who shall use the payment.
- (4) The agency memorializes the payment in a written public record.

Staff proposes amending regulation 18944.2(a)(1) to allow the donor to make payments directly to an airline or hotel rather than requiring that the agency receive the payment. In cases where the latter three factors are not in dispute (i.e., the trip is

for agency business, the agency selects the employee to go and memorializes all of these steps in a public record), the payment may still be a gift to the assigned public employee where the donor chooses to pay a bill directly (to a hotel or for plane tickets). Staff would like to explore modification or elimination of the first factor.

**Item C4: Regulation 18705.1 Materiality Standard [DEFERRED]:**

Regulation 18705.1 sets forth the materiality standard for business entities in which a public official has an economic interest for purposes of determining whether there is a conflict of interest in a governmental decision. For business entities that are *indirectly* involved in governmental decisions, regulation 18705.1(c)(2) sets forth the relevant materiality standards with reference to the New York Stock Exchange (“NYSE”) listing requirement. That requirement was previously based on a company’s earnings for its most recent fiscal year.

Since the adoption of this regulation, the NYSE has changed its listing requirements, creating confusion as to what standard to apply.

A proposed technical amendment was presented to the Commission in October, which would have mirrored the new listing requirements as set forth in the NYSE Listed Company Manual. However, the Commission asked staff to set this item as a regulation project for 2007 in hopes of fully investigating whether the NYSE standard is the preferred standard or whether a new, easier standard for the regulation should be developed.

#### **IV. SHIFTED ITEMS**

In addition, numerous items have been moved due to the introduction of new items. Most of the changes reflected on the chart are mere timing changes (which are not discussed herein) with a few notable exceptions:

**Item B9: Making and Receipt of Contributions (Regulation 18421.1):**

Section 82025 provides that an expenditure is made the earlier of: (a) when the payment is made, or (b) when the goods *or* services are received. However, independent expenditures are generally “made” when the communication is made. In cases where no communication is actually sent, the independent expenditure has not been “made” for reporting purposes. **Original Proposal:** Define when an independent expenditure is “made” for purposes of the Act.

**CHANGE:** Commissioner Leidigh asked that the project be expanded to address necessary changes to the Commission’s definition of “independent expenditure” in light of the opinion in the case *The Governor Gray Davis Committee v. American Taxpayers Alliance* (2002) 102 Cal. App. 4th 449.

**Item B13: “Street Address” (Regulation 18421.2):** Regulation 18421.2 provides that the term “street address” for purposes of the campaign reporting rules

means the street name, building number, and city, state, and zip code.” Contributions in the amount of \$100 or more shall be itemized on campaign statements. Many people on active duty in the military do not have a “street address,” as that term is defined. The only “address” available to these individuals may be the A.P.O. (Army and Air Force Post Office) or F.P.O. (Fleet Post Office (Navy)) address assigned by the military. As a result, a filer who receives contributions from military personnel may not be able to disclose the contribution as required by law. **Proposal:** Regulation 18421.2 should be amended to include A.P.O. and F.P.O. addresses for military personnel. Other clarifying changes may also be made.

**CHANGE:** This item was originally set for a June prenotice hearing and an August adoption. After initial research in the matter, staff believes the project is noncontroversial and can simply be presented to the Commission for adoption a single time. Adoption will now take place in September.

**Item B16: Commission Review of Advice Letters Nos. I-06-138 and I-06-071 or, as an Alternative to Further Informal Advice, Amendment of Regulation 18215(c)(16) and/or Consideration of Proposed Regulation 18530.10. (Chuck Bell Proposal.):** The advice letters at issue here (*Bell Advice Letters* Nos. I-06-138 and I-06-071) responded to inquiries from Charles H. Bell, Jr., regarding the circumstances in which a sponsor’s payments to a sponsored committee would be considered “contributions” to that committee, subject as such to the limits of section 85303(a). Specifically, Mr. Bell asked about the boundaries between payments “for the establishment and administration of a sponsored committee” – exempt from definition as contributions under regulation 18215(c)(16) – versus payments made to support committee fundraising activities. The latter payments are not exempt from the definition of “contribution” because they have not been regarded as costs of “establishment or administration” under regulation 18215(c)(16).

As noted in the first advice letter (No. I-06-071), when regulation 18215(c)(16) was originally before the Commission for adoption, Mr. Bell proposed a draft amendment specifically exempting from the Act’s definition of “contribution” the sponsor’s payments of a sponsored committee’s fundraising costs. The Commission declined to insert such an exemption in the language of regulation 18215(c)(16) in December 1996 and again in January 1997. In his more recent requests, Mr. Bell urged staff to read into regulation 18215(c)(16) and section 85303(a) a distinction between “direct” and “indirect” payments to a committee which, as a practical matter, would define payments made “for the purpose of making contributions to candidates for elective state office,” which are limited by section 85303(a).

**CHANGE:** The Commission considered this item in May and decided that additional advice to Mr. Bell would be considered at the June Commission meeting. The Commission also decided that further regulatory work on the issues raised by Mr. Bell would take place in the future. The emphasis of the project has now shifted from sponsored committee disclosure to interpretation of the exception to the

contribution limit in Section 85303(c). The item is now set for a second interested persons' meeting in July, with prenotice in September and adoption in November.

**Appendix 1: Regulation Calendar**

**Appendix 2: Monthly Regulation Calendar**